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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

TOWN OF COLORADO CITY, an
Arizona municipality,

Plaintiff,

v.

THE UNITED EFFORT PLAN
TRUST, (Dated November 9, 1942,
Amended April 10, 1946, and Amended
and Restated on November 3, 1998);
and BRUCE WISAN, Special
Fiduciary; RONALD COOKE and
JINJER COOKE, husband and wife;
ROBERT BLACK and JANE DOE
BLACK, husband and wife,

Defendants,

STATE OF UTAH ATTORNEY
GENERAL MARK L. SHURTLEFF,

Defendant-Intervenor.

Case No. 3:11-cv-8037 – DGC

**UTAH ATTORNEY GENERAL
MARK L. SHURTLEFF'S REPLY
MEMORANDUM IN SUPPORT OF
MOTION TO STAY**

Pursuant to Rule 7.2(d) of the Arizona Local Rules of Civil Procedure,
Intervenor Utah Attorney General, Mark L. Shurtleff, through counsel, submits his
Reply Memorandum in Support of his Motion to Stay.

ARGUMENT

The Utah Attorney General agrees that discovery in this case should not be stayed. The Utah Attorney General also agrees that resolution of *FLDS v. Wisan, et al*, will not resolve the dispute between the Cookes and Mr. Black. However, as this Court has recognized, the Tenth Circuit in *FLDS v. Wisan*, may rule on the constitutionality of the reformation of the Trust. (See Transcript of April 11, 2012 Scheduling Conference, [Dkt. 78-1 at p. 17](#) lines 17–24.) And such a ruling would have an impact on this case. (See *id.* “If . . . the Tenth circuit affirms Judge Benson’s decision . . . [o]ne question will be who will be bound by the Tenth Circuit holding that it’s unconstitutional.”) Indeed, Colorado City has acknowledged that in order to obtain a declaration regarding the Cookes’ and Black’s rights to the subject property, this Court must first determine whether Bruce Wisan’s conduct in administering the Trust violated the First Amendment. ([Am. Compl. Dkt.16](#), ¶ 107.)

Under principles of comity, this Court should wait until the Tenth Circuit rules, so as to avoid potentially conflicting rulings on the same issue. “The concern manifestly is to avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result.” *W. Gulf Mar. Ass’n v. ILA Deep Sea Local 24, S. Atl. and Gulf Coast Dist. of the ILA, AFL-CIO*, 751 F.2d 721, 729 (5th Cir. 1985) (citations omitted). “Piecemeal litigation occurs when different tribunals consider the same issue, thereby duplicating efforts and possibly reaching different results.” *Am. Int’l Underwriters (Philippines), Inc. v. Cont’l Ins. Co.*, 843 F.2d 1253, 1258 (9th Cir. 1988).

There is no question that the issue of whether the reformation of the Trust, and its subsequent administration, was constitutional is one that calls for a uniform result. The Trust cannot be administered with conflicting rulings governing Arizona and Utah on

1 this issue. The Court should therefore delay ruling on the merits of this case until it has
2 the benefit of the Tenth Circuit's ruling. In order to ensure that the facts necessary to
3 resolving this case are fully developed, but to avoid the potential of a ruling conflicting
4 with the Tenth Circuit, this Court should impose a stay after fact and expert discovery is
5 completed.

6 **CONCLUSION**

7 Based on the foregoing, and for the reasons set out in the Utah Attorney
8 General's opening brief, the Utah AG asks this Court to stay the dispositive motion
9 deadline and the trial of this action until after the Tenth Circuit Court of Appeals has
10 issued a ruling in *FLDS v. Wisan*.

11 DATED August 29, 2012.

12 /s/ Joni Jones

13 JONI J. JONES

14 DAVID N. WOLF

15 Assistant Utah Attorneys General

16 Attorneys for Defendant Mark L. Shurtleff
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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2012 I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of a Notice of Electronic Filing to the following CM/ECF registrants:

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I hereby certify that I served the attached document by first class mail on the following participant who is not a registered participant of the CM/ECF System:

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/s/ Suzanne Nelson